



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 622

**APPLICANT**      **MX**  
**APPLICANT**      **MY**  
**RESPONDENT**    **F Ltd**

**The Tribunal orders:**

F Ltd is to pay MX and MY as trustees of the M Trust \$6941.29 on or before Friday 8 December 2023.

**Reasons:**

1. In November 2021, the Applicants accepted a quote from F Ltd (the company) for \$9,327.00, reduced by \$1000.00 from the original quote of \$10,327.00. This quote was for materials and labour to paint the interior of their rental property at [Address]. The terms specified 1 undercoat and 2 topcoats for painting the insides of cupboards, windows, doors, walls and ceilings. The Applicants paid \$6995.24, being 75% of the quote.
2. The Applicants claim \$12,660.35 comprising: \$9,430.00 to remedy the painting, \$345.00 to reglaze 3 overpainted windows; \$724.30 for 13 replacement window stays; \$803.85 for a [Painting Company] inspection report, \$660.00 for 22 hours-time and effort at \$30.00 an hour for time spent making additional trips, sorting out a new painter and preparing the claim, and \$697.20 for mileage of 840km at 0.83 for 4 return trips from their home in [City] to [Town] at 210 km return.
3. The issues to be determined are:
  - a. Did the company fail to exercise reasonable care and skill and/or fail to provide an outcome that was reasonably fit for purpose?
  - b. If so, what is the remedy?

**Did the company fail to exercise reasonable care and skill and/or fail to provide an outcome that was reasonably fit for purpose?**

4. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides that services must be performed with reasonable care and skill. Broadly "*reasonable*" means the standard of care and skill a reasonable consumer would expect of a reasonable service provider. The guarantee under section 29 of the CGA requires that services and any products resulting from the services are reasonably fit for any particular purpose the consumer makes known to the supplier, and of such a nature and quality as to be reasonably expected to achieve any particular result that the consumer makes known.

5. The Applicants position is that they wanted a high quality job, but instead the quality of the surface preparation and the standard of the finish was poor, falling short of acceptable trade standards with inadequate coats, that paint was dropped on 3 windows and there was damage to the brand new window hardware, which they say ought to have been removed and which was scratched during sanding.
6. The company's position is that the house was aged, that there were holes in the wall, that the windows were in a poor state, that it taped around the windows, and that the Applicant said he was happy with the windows. In relation to the hardware, its position was that it had requested that the hardware not be installed until after the painting was performed, but instead it was, and that subsequently it washed the hardware with a scotch brite sponge to remove paint.
7. On balance, I find that overall the internal painting work, apart from primarily the ceiling, which the Applicant acknowledged at the hearing was fine, fell short of the standard of reasonable care and skill, and also the overall outcome was not reasonably fit for purpose. I also accept that the damage to the window hardware was likely caused by the company, but that the Applicants contributed to the likelihood of some damage by installing the hardware prior to the painting being performed. I say this for reasons which include:
  - a. I gave greater weight to the independent [Painting Company]'s report that most of the home had new plasterboard, door, door frames and window trim, that there was no reason those surfaces should not produce the result expected of a new build, and that they did not. I also preferred its evidence that the quality of the interior paint work fell short of an acceptable trade standard and also failed to meet the standard described in AS/NZS 2311:2017. This included patchy finish to most of the walls, and some poor filling.
  - b. I accept that some existing surfaces such as doors and existing timber window frames were aged so would not appear as a new surface, but I also accepted the [Painting Company]'s conclusion that regardless these had poor preparation and that most would need to be re-prepared and repainted;
  - c. There was no dispute the window hardware was new and the company acknowledged and I accept that it needed to be cleaned, as there was some extraneous paint. On balance, I preferred the Applicants position that afterwards a reasonable quantity, which it said was 14 out of 26, had the chrome scratched and I find it more likely than not that this was due to the company's actions washing off the paint with a scotch brite sponge;
  - d. However, I also preferred the company's evidence that the Applicants failed to accede to the company's request not to install the hardware until after the painting was complete, and I find that this contributed to the likelihood of some damage.

**If so, what is the remedy?**

8. Section 32 of the CGA provides that where a service supplied to a consumer fails to comply with a guarantee set out in sections 28 to 30, and can be remedied, then a consumer must notify the supplier and require the supplier to remedy the failure. Where the supplier then refuses or neglects to or does not succeed in remedying the failure within a reasonable time, the consumer may have the failure remedied elsewhere and recover all reasonable costs incurred or cancel the contract. However, if there has been a breach of a substantial character as defined in s36 or the failure cannot be remedied, the consumer is entitled to cancel the contract or obtain damages for any reduction in value of the service. Also, the consumer is entitled to compensation for any reasonably foreseeable consequential loss. (s32(c)).
9. The company's position is that after some initial remedial work, it was told not to come back and that an agreement was reached to walk away without the Applicant having to pay the balance of \$2331.76.

10. However, on balance, given the extent of the issues identified in the [Painting Company]'s report and the extent of the remedial action required, I find that the failure was of a substantial character, which entitled the Applicants to cancel the contract. Section 38 provides that where a consumer cancels a contract, it is entitled to a refund of any money paid unless the tribunal orders that the supplier may retain the whole or part of this money, taking into account relevant factors set out in s39.
11. Quantifying the extent of the value of the work is not an exact science. I accept that in effect the Applicants have received a refund of \$2331.76 as a result of the agreement that the company's would waive this balance. I also accept that the Applicants received some value from the work, including the ceiling, and that by installing the window hardware ahead of the painting contrary to the company's request, it made the work more difficult, and increased the risk of some damage. On balance, having regard to the substantial work to remedy the faults, which is also supported by the remedial cost, but accepting that there was some value from materials and labour for the ceiling, some doors and window frames and that not all the painting was faulty, I find that the company can retain \$2250.00 of the money paid and so must refund the balance of \$4745.24 which is on top of the \$2331.76 waived.
12. In addition, I find that the Applicants are entitled to the following reasonably foreseeable losses:
  - a. \$803.85 for the [Painting Company] inspection report
  - b. \$697.20 for mileage of 840km at 0.83 for 4 return trips [City] to [Town] at 210 km return for the Applicant to try to sort the painting out;
  - c. \$350.00 as a contribution for damage to window stays; and
  - d. \$345.00 to reglaze the overpainted windows.
13. However, time spent preparing the claim is not a cost recoverable under s43 of the Disputes Tribunal Act 1988.
14. So, I order F Ltd to pay MX and MY as Trustees of the M Trust a total of \$6941.29 on or before Friday 8 December 2023.

**Referee: GM Taylor**  
**Date: 17 November 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.